IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12185 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKH @ ACHU @ KALIO CHHAGANBHAI MARU (VANKAR)

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/02/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner was detained as a dangerous person under the order of the Commissioner of Police, Ahmedabad City dated 30.10.2000 and he is presently at District

Jail, Bhuj.

#. Challenging this order aforesaid learned counsel for the petitioner raised manifold contentions. But as this petition deserves acceptance only on one contention it is not necessary to give details of all those contentions, discuss and decide.

#. It is not in dispute that none of the respondents has filed reply to the Special Civil Application.

#. Learned counsel for the petitioner contended that last criminal complaint was registered against the petitioner on 5.7.2000 and the detention order has been passed on 30.10.2000. So, there is delay of more than 3 months and 25 days in passing of this order from the date of last criminal complaint registered against the petitioner. Delay ipso facto itself may not be ground to hold the order of detention to be invalid or continued detention of the petitioner to be illegal but where detenu challenges the order of detention on the ground of this delay in passing of the order thereof it is for the detaining authority to explain satisfactorily to the satisfaction of this court about the delay and in case it is not done so only on this ground the continued detention of the detenu is taken to be illegal. This explanation for undue long delay is either to be furnished in the grounds of detention or in affidavit-in-reply. In this case, as said earlier the reply to the Special Civil Application has not been filed by the respondents. The respondents have not furnished any explanation whatsoever for this undue long delay made by the detaining authority in passing of detention order of the petitioner. It is also not in dispute that the detaining authority has not given any explanation for this delay made by it in passing of this impugned order.

#. From the facts which have been stated by the petitioner in the petition, I find that the last criminal complaint registered against the petitioner on 5.7.2000 he was enlarged on bail in this case by the court on 1.8.2000. If we go by this date there is a delay of more than 2 months and 29 days in passing of this detention order. Then comes the statement of 2 witnesses recorded in the matter. These statements were recorded on 23.10.2000 and 25.10.000. I find sufficient merits in the contention of the learned counsel for the petitioner that the statements of witnesses recorded is nothing but an act of part of detaining authority to patch this delay in passing of the detention order. It is not in dispute that the detaining authority verified the statements of

those 2 witnesses on 29.9.2000 and on the next day the detention order has been passed. From this fact also the inference can be drawn that possibility to overcome this undue delay made in passing of the detention order these statements would have been recorded. The continued detention of the detenu is otherwise illegal as there was no reasonable time available with the detaining authority to verify the genuineness of the statements of the 2 witnesses.

#. So, taking into consideration this matter either from ground of undue long delay in passing of the detention order or the order is passed on the very next day of verifying the statements of witnesses by the detaining authority, the continued detention of the petitioner is illegal.

In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 30.10.2000 is quashed and set aside. The petitioner Hasmukh @Achhu @Kalio Chhaganbhai Maru (Vankar), the detenu, at present in Nadiad Jail, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. As the respondents fairly conceded the position, no order as to costs.

(S.K.Keshote, J.)

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